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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9  
10 JULIUS TERRELL,

11 Plaintiff,

12 v.

13 COSTCO WHOLESALE  
14 CORPORATION,

15 Defendant.

CASE NO. C16-1415JLR

ORDER OF REMAND

16 **I. INTRODUCTION**

17 Before the court is Plaintiff Julius Terrell's and Defendant Costco Wholesale  
18 Corporation's ("Costco") responsive briefing to the court's order directing briefing on  
19 Mr. Terrell's Article III standing. (*See* 4/12/17 Order (Dkt. # 52); Costco Op. Br. (Dkt.  
20 # 54); Terrell Op. Br. (Dkt. # 55); Costco Resp. (Dkt. # 57); Terrell Resp. (Dkt. # 58).)  
21 Having considered the parties' briefing, the relevant portions of the record, and the  
22 //

1 applicable law, the court REMANDS this case to King County Superior Court for lack of  
2 subject matter jurisdiction.

## 3 II. BACKGROUND & ANALYSIS

4 This is a putative class action in which Mr. Terrell alleges that Costco violated the  
5 Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, by providing  
6 noncompliant disclosures to job applicants. (*See generally* Compl. (Dkt. # 5-1).) On  
7 September 6, 2016, Costco removed this case from King County Superior Court. (*See*  
8 Not. of Removal (Dkt. # 1).) Costco then moved to dismiss the case for lack of Article  
9 III standing based on *Spokeo, Inc. v. Robins*, --- U.S. ---, 136 S. Ct. 1540 (2016). (MTD  
10 (Dkt. # 19).) Mr. Terrell responded that his allegations supported standing and, at any  
11 rate, the case should be remanded—not dismissed—if the court concluded that he lacked  
12 standing. (*See* MTD Resp. (Dkt. # 28).)

13 Relying in large part on the Ninth Circuit’s initial opinion in *Syed v. M-I, LLC*,  
14 846 F.3d 1034 (9th Cir. 2017) (“*Syed I*”), *amended and superseded on denial of*  
15 *rehearing en banc by Syed v. M-I, LLC*, 853 F.3d 492 (9th Cir. Mar. 20, 2017) (“*Syed*  
16 *II*”), the court concluded that Mr. Terrell had adequately alleged facts to support his  
17 Article III standing and denied Costco’s motion to dismiss. (3/10/17 Order (Dkt. # 44).)  
18 Following the court’s order, however, the Ninth Circuit issued *Syed II*, which amended  
19 and superseded *Syed I*. *See Syed II*, 853 F.3d at 499-500. This court reviewed *Syed II*,  
20 determined that the amendments to *Syed I* arguably alter the conclusion the court reached  
21 in its initial order denying Costco’s motion to dismiss, and ordered the parties to brief the  
22 impact of *Syed II* on Mr. Terrell’s Article III standing. (4/12/17 Order at 2-5.)

1 In response, neither party argues that Mr. Terrell's allegations sufficiently support  
2 his Article III standing.<sup>1</sup> Courts lack subject matter jurisdiction over actions in which the  
3 plaintiff lacks Article III standing. *See Bernhardt v. Cty. of L.A.*, 279 F.3d 862, 868 (9th  
4 Cir. 2002); (*cf.* Costco Resp. at 3 ("The Court should not muddle Article III standards  
5 with the question of whether a matter can be removed under 28 U.S.C. § 1441.").)  
6 Because the federal courts are courts of limited jurisdiction, the court presumes that a  
7 given cause lies outside its jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*, 511  
8 U.S. 375, 377 (1994). Costco, as the removing party, bears the burden of establishing the  
9 court's subject matter jurisdiction.<sup>2</sup> *See id.* Instead, Costco argues that Mr. Terrell lacks  
10 standing and that this court therefore lacks subject matter jurisdiction. (Costco Op. Br. at  
11 1-5.) Accordingly, the court concludes that Costco has failed to rebut the presumption  
12 against federal jurisdiction.<sup>3</sup>

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14 <sup>1</sup> (*See* Terrell Op. Br. at 2-3 (arguing that the court should remand without ruling on  
15 standing because neither party advocates for federal jurisdiction); Costco Op. Br. at 1-5 (arguing  
16 that under *Spokeo* and *Syed II*, Mr. Terrell failed to allege an injury-in-fact and therefore lacks  
17 Article III standing); *see also* Terrell Not. (Dkt. # 51) at 2-3 ("Plaintiff does not wish to expend  
the Court's resources on further litigation of this matter only to have Defendant raise the issue of  
subject-matter jurisdiction months, or even years, from now. Nor does Plaintiff wish to litigate  
under the constant threat of Defendant raising the issue of a lack of subject-matter  
jurisdiction.").)

18 <sup>2</sup> The burden of demonstrating federal jurisdiction can shift depending on the stage of the  
19 case. *See, e.g., DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) (requiring the  
20 plaintiffs to establish federal jurisdiction in a removed case because they were "the part[ies]  
21 asserting federal jurisdiction when it [was] challenged"). Here, no substantive proceedings  
occurred between Costco's removal on September 6, 2016, and its challenge to Mr. Terrell's  
standing on September 23, 2016. (*See* Dkt.) Moreover, neither party has shouldered the burden  
of showing federal jurisdiction.

22 <sup>3</sup> Costco argues that the court should nonetheless determine whether Mr. Terrell has  
adequately pleaded Article III standing. (Costco Resp. at 2-3.) The court need not reach that

1 The parties also dispute whether the court's lack of subject matter jurisdiction  
2 warrants remand or dismissal. (Terrell Op. Br. at 2-5; Costco Op. Br. at 5-8; Terrell  
3 Resp. at 1-3; Costco Resp. at 3-4.) In a case removed from state court, "[i]f at any time  
4 before final judgment it appears that the district court lacks subject matter jurisdiction,  
5 the case shall be remanded." 28 U.S.C. § 1447(c). Remand is generally compulsory, not  
6 discretionary. *See Polo v. Innoventions Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016)  
7 (citing *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989)) ("Remand is the correct  
8 remedy because a failure of federal subject-matter jurisdiction means only that the federal  
9 courts have no power to adjudicate the matter. State courts are not bound by the  
10 constraints of Article III.").

11 Costco argues a futility exception to the compulsory language of Section 1447(c)  
12 applies here. (Costco Op. Br. at 5-7 (citing *Bell v. City of Kellogg*, 922 F.2d 1418,  
13 1424-25 (9th Cir. 1991)); Costco Resp. at 3-4 (same).) Even assuming that the futility  
14 exception embraced in *Bell* remains good law, *cf. Int'l Primate Prot. League v. Adm'rs of*  
15 *Tulane Educ. Fund*, 500 U.S. 72, 88-89 (1991); *Polo* 833 F.3d at 1197, Costco has not  
16 shown that it is "certain that a remand to state court would be futile," *Bell*, 922 F.2d at

17  
18 question because neither party attempts to rebut the presumption that the court lacks subject  
19 matter jurisdiction. *See, e.g., Mocek v. Allsaints USA Ltd.*, --- F. Supp. 3d ---, 2016 WL  
20 7116590, at \*2 (N.D. Ill. Dec. 7, 2016) ("Because the parties are now aligned in the view that I  
21 lack subject-matter jurisdiction, I need not accept defendants' invitation to undertake a *Spokeo*  
22 analysis to conclude that remand is required."); *Black v. Main Street Acquisition Corp.*,  
No. 5:11-CV-0577 (LEK/DEP), 2013 WL 1295854, at \*1 (N.D.N.Y. Mar. 27, 2013) (remanding  
a case *sua sponte* where "no party shoulder[ed] the burden of proving jurisdiction"); *but see St.*  
*Louis Heart Ctr., Inc. v. Nomax, Inc.*, No. 4:15-CV-517 RLW, 2017 WL 1064669, at \*3 (E.D.  
Mo. Mar. 20, 2017), *appeal docketed*, No. 17-1794 (8th Cir. Apr. 13, 2017) (rejecting similar  
reasoning and dismissing a removed action with prejudice based on the plaintiff's failure to  
demonstrate its standing).

1 1425; *see also Polo*, 833 F.3d at 1198-99. Costco shows only that when analyzing a  
2 plaintiff's standing, Washington state courts tend to follow federal Article III  
3 jurisprudence. (*See Costco Op. Br.* at 5-6; *Costco Resp.* at 3-4.) The Washington  
4 appellate courts have not yet determined whether *Spokeo*'s clarifications to the  
5 injury-in-fact prong extend to Washington law on standing, and it is therefore unclear  
6 whether remand would be futile. *See Polo*, 833 F.3d at 1198-99. The comity interests  
7 embodied by Section 1447(c)'s mandatory language therefore operate strongly here. *Cf.*  
8 *Bell*, 922 F.2d at 1425 ("Because we are certain that a remand to state court would be  
9 futile, no comity concerns are involved."). Accordingly, the court remands this case for  
10 lack of subject matter jurisdiction.

### 11 III. CONCLUSION

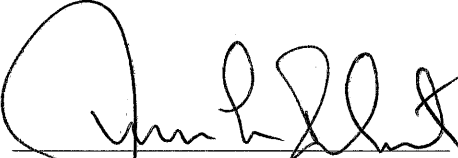
12 Based on the foregoing analysis, the court ORDERS that:

- 13 1. Pursuant to 28 U.S.C. § 1447(c), all further proceedings in this case are  
14 REMANDED to the King County Superior Court;
- 15 2. The Clerk shall send copies of this order to all counsel of record for all  
16 parties;
- 17 3. Pursuant to 28 U.S.C. § 1447(c), the Clerk shall mail a certified copy of the  
18 order of remand to the Clerk for King County Superior Court;
- 19 4. The Clerk shall also transmit the record herein to the Clerk of the Court for  
20 King County Superior Court;
- 21 5. The parties shall file nothing further in this matter, and instead are  
22 instructed to seek any further relief to which they believe they are entitled

1 from the courts of the State of Washington, as may be appropriate in due  
2 course; and

3 6. The Clerk shall CLOSE this case.

4 Dated this 16<sup>th</sup> day of May, 2017.

5   
6 JAMES L. ROBART  
7 United States District Judge  
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